

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 819 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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RAIDHANBHAI MOHANBHAI BORICHA

Versus

COMMISSIONER OF POLICE  
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Appearance:

MR PK JANI for Petitioner

MR KT DAVE, AGP, for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2000

ORAL JUDGEMENT

1. Commissioner of Police, Rajkot City, Rajkot, passed an order on December 10, 1999, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner-Raidhanbhai Mohanbhai Boricha of Rajkot, under the provisions of the said Act.

2. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner-detenu is required to be immediately prevented from pursuing his activities, which are detrimental to public order. While considering less drastic remedies, the detaining authority considered the possibility of taking action under Section 57(c) of the Bombay Police Act, but observed that since two convictions are required for proceeding thereunder, it is not possible to resort to that remedy.

3. Mr. P.K. Jani, learned advocate for the petitioner, has relied heavily on the ground of non-application of mind on part of the detaining authority. He submitted that in all the cases registered against the detenu, the investigations were pending. Therefore, there was no question of proceeding under Section 57(c) of the Bombay Police Act against the detenu in absence of any history/allegation of conviction. Consideration of this aspect itself would reflect non-application of mind and would vitiate the order of detention. Mr. Jani further submitted that, apart from the above defect, there is another aspect which indicates non-application of mind. He has drawn attention of this Court to Section 57 of the Bombay Police Act. Section 57(c) indicates that action can be taken if there are three convictions under the Bombay Prohibition Act, whereas the detaining authority observed that two convictions are required. Mr. Jani, therefore, submitted that the detaining authority has passed the order in a casual and mechanical manner. The order would stand vitiated and the same may be quashed. In support of his arguments, Mr. Jani has placed reliance on the following decisions :-

(1) Bhupatbhai R. Vasava v. District Magistrate,  
Bharuch & Ors., 1992(2) GLH 350.

(2) M.M. Shaikh v. Commissioner of Police, Ahmedabad  
City & Ors., 1995(2) GLR 1464.

(3) Yakub Ismail Chippa v. District Magistrate,  
Bharuch, 1996(1) GLR 4.

4. Mr. K.T. Dave, learned Assistant Government Pleader, has opposed this petition.

5. Having regard to rival side contentions, the

petition deserves to be allowed only on the ground relied upon by learned advocate, Mr. Jani. A plain reading of the grounds of detention indicates that the detaining authority has not resorted to proceedings under Section 57(c) for the reason that minimum two convictions are required for taking action under the provisions of the said Act. Now, if the provision of Section 57(c) is considered, it requires three convictions under Bombay Prohibition Act for taking action against such persons. This is a clear non-applications of mind on part of the detaining authority as it reflects that the authority has not even read the provision under which it thought of and rejected the idea of taking action against the detenu for the reasons stated in the grounds of detention.

6. Apart from the above reason for quashing the order of detention, there is another aspect which requires consideration. All the offences registered against the detenu are pending investigation. Possibility of a report under Section 169 of Code of Criminal Procedure being filed against the accused-detenu cannot be ruled out. There is no allegation of any conviction against the detenu in past and, in absence of any history of any conviction, consideration of Section 57 would become irrelevant and considering an irrelevant factor would indicate non-application of mind and would vitiate the order of detention. In this regard, the decisions cited by Mr. Jani, namely, (1) Bhupatbhai R. Vasava v. District Magistrate, Bharuch & Ors., 1992(2) GLH 350; (2) M.M. Shaikh v. Commissioner of Police, Ahmedabad City & Ors., 1995(2) GLR 1464; and (3) Yakub Ismail Chippa v. District Magistrate, Bharuch, 1996(1) GLR 4, would be applicable as the principle laid down in those decisions would be applicable to the facts of the present case. The petition, therefore, deserves to be allowed.

7. In view of the above discussion, the petition is allowed. The impugned order of detention dated December 10, 1999, passed against the detenu is hereby quashed. The detenu-Raidhanbhai Mohanbhai Boricha is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[ A.L. DAVE, J. ]

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